

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Charity Merrill — PETITIONER
(Your Name)

VS.

Garfield • Hecht et al. RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Colorado Court of Appeals and Colorado Supreme Court

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

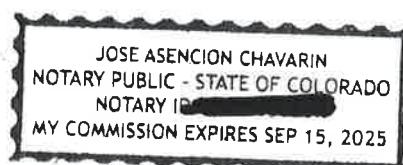
The appointment was made under the following provision of law: _____

, or

a copy of the order of appointment is appended.

*State of Colorado
County of Garfield
08/25/2025

Jose Asepcion Chavarin
Notary Public
Sep 15, 2025 exp*



Charity Merrill
(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Charity Merrill, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ _____	\$ _____	\$ _____	\$ _____
Self-employment	\$ <u>φ</u>	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ _____	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____	\$ _____	\$ _____
Gifts	\$ _____	\$ _____	\$ _____	\$ _____
Alimony	\$ _____	\$ _____	\$ _____	\$ _____
Child Support	\$ _____	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ _____	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ _____	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____

Total monthly income: \$ φ \$ _____ \$ _____ \$ _____

* After being the victim of a marriage scam, title fraud and embezzlement of company funds, friends and organizations have financially supported petitioner for over 6 yrs. while she has tried to learn law and work her way through the legal system after being forced to represent herself. Petitioner has an intellectual Disability, and spinal injury.

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.) *Petitioner has an intellectual disability and a spinal injury. She currently is being forced to study law after being forced to self represent.*

Employer	Address	Dates of Employment	Gross monthly pay law after being forced to self represent.
<i>N/A</i>			\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<i>N/A</i>			\$
			\$
			\$

4. How much cash do you ~~and your spouse~~ have? \$ *48.00 currently*

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
<i>checking</i>	\$ <i>48.00</i>	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value *600,000.*

Other real estate
Value _____

Motor Vehicle #1
Year, make & model *06 VW Touareg*
Value *1,000*

Motor Vehicle #2
Year, make & model *01 Jeep Wrangler*
Value *5,000*

Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>Michel Berraldi</u>	<u>Maint. pmt.</u> <u>\$ 10,000 mo - unpaid</u> <u>\$ He refuses to pay</u> <u>District Court</u> <u>\$ refuses to enforce</u> <u>for 6 yrs.</u>	<u>\$ Ø</u> <u>\$</u> <u>\$</u>

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

1300 mthly
400 insurance
400 Taxes
360
2206

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 2,200.	\$ Ø
Are real estate taxes included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 1,160.	\$ Ø
Home maintenance (repairs and upkeep)	\$ 1,000.	\$ Ø
Food	\$ 600.	\$ Ø
Clothing	\$ 150.	\$ Ø
Laundry and dry-cleaning	\$ Ø	\$ Ø
Medical and dental expenses	\$ 1,000.	\$ Ø

Some utilities
currently off, due to
non-payment including
No heat last winter

SNOW plow, irrigation, lawn, septic
Services currently canceled due
to non-payment

Gas
Winter
Tires

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 400	\$ 0
Recreation, entertainment, newspapers, magazines, etc.	\$ can not afford	\$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ already added in mortgage	\$ 0
Life	\$ can not afford	\$ 0
Health	\$ 1,000 currently canceled due to non payment of maint.	\$ 0
Motor Vehicle	\$ 60.00	\$ 0
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): Back Taxes 60,000 - on hold due to Law suits title fraud	\$ _____	\$ 0
Installment payments		
Motor Vehicle	\$ _____	\$ 0
Credit card(s) \$ 20,000 owed, on hold due to Non-payment of maint. and lawsuit	\$ _____	\$ 0
Department store(s)	\$ _____	\$ 0
Other: Business loan \$ 150,000.	\$ 1,000.	\$ 1,000
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 100.	\$ _____
Personal Loans - growing		
Other (specify): 75,000 of on hold due to Lawsuits	\$ _____	\$ _____
Total monthly expenses:	\$ 8,670	\$ 1,000.

* Please NOTE. Petitioner has an intellectual disability which limits her ability to do numbers, calculations, work with calculators or computers. The monthly expenses do not include paying off Taxes, credit cards or loans. Currently everything is in default or canceled due to a 6 yr. court battle after her home title was defrauded and her company being stolen and cash assets embezzled. She has been denied assets from her company to pay for legal counsel.

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months? **Unknown. Currently in litigation @ the district Court.**
 Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No **UnKnown currently in litigation**
If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form? **Unknown**

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help/explain why you cannot/pay the costs of this case.

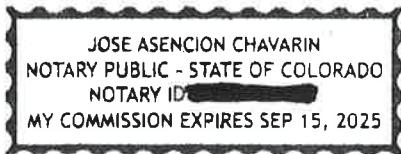
I was the victim of a marriage scam in which the "husband" defrauded the title to my home and business and is currently embezzling all assets to keep me from being able to afford legal counsel or a forensic accounting to expose him. The courts continue to ignore my disability and insist I represent myself, which I cannot do. This has gone on for 6 years.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: **Charity Merritt**, Aug 22, 2025

State of Colorado
County of Garfield
08/25/2025

Jose Asencio Chavarin
Notary Public
Sep 15, 2025 EXP



Charity Merritt
(Signature)

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Charity Merrill — PETITIONER
(Your Name)

VS.

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The appointment was made under the following provision of law: _____
_____, or

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IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

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1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ _____	\$ _____	\$ _____	\$ _____
Self-employment	\$ 75.00	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ _____	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____	\$ _____	\$ _____
Gifts	\$ _____	\$ _____	\$ _____	\$ _____
Alimony	\$ _____	\$ _____	\$ _____	\$ _____
Child Support	\$ _____	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ _____	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ _____	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____
Total monthly income:	\$ 75.00			

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
Disabled			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 48.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
ANB Bank	Checking	\$ 48.00	\$
		\$	\$
		\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value \$600,000

Other real estate
Value _____

Motor Vehicle #1
Year, make & model 06 VW Touareg
Value \$1,000

Motor Vehicle #2
Year, make & model 01 Jeep Wrangler
Value \$5,000

Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
Michel Bervaldi	\$ 10,000/month (unpaid)	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 2,200	\$ _____
Are real estate taxes included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 500.00	\$ _____
Home maintenance (repairs and upkeep)	\$ 1,000.00	\$ _____
Food	\$ 600.00	\$ _____
Clothing	\$ 100.00	\$ _____
Laundry and dry-cleaning	\$ 0.00	\$ _____
Medical and dental expenses	\$ 300.00	\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 400.00	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ 50.00	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ _____	\$ _____
Installment payments		
Motor Vehicle	\$ _____	\$ _____
Credit card(s)	\$ 1000.00	\$ _____
Department store(s)	\$ _____	\$ _____
Other: <u>Business Loan \$150,000</u>	\$ 1000.00	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 350.00	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ 7,500	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

This is a very complicated 5+ yr. case (a case within a case) in which the plaintiff who has a Traumatic Brain Injury and a spinal injury has been forced to self represent due to the courts not acknowledging her disabilities and not enforcing maintenance or allowing her to use the family assets from a family owned business to pay for her basic needs including legal council, while allowing the opposing party to do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 6-23-25

STATE OF CO
COUNTY OF Gartield

The foregoing instrument was acknowledged before
me this 23rd day of June, 2025, by Charity Merrill Benaldi

Amanda Salas
Notary Public's Signature
My Commission Exp. 08/03/2027

Amanda Salas
Notary Name

Charity Merrill
Signature - Charity Merrill

Amanda Salas NOTARY PUBLIC STATE OF COLORADO NOTARY ID# <u>██████████</u> MY COMMISSION EXPIRES 08/08/2027
--

No. _____

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(Your Name)

VS.

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The appointment was made under the following provision of law: _____

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a copy of the order of appointment is appended.


(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Charity Merrill

my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

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Gifts	\$ _____	\$ _____	\$ _____	\$ _____
Alimony	\$ _____	\$ _____	\$ _____	\$ _____
Child Support	\$ _____	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ _____	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ _____	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____
Total monthly income:	\$ 75.00			

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
Disabled			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 48.00
 Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
ANB Bank	Checking	\$ 48.00	\$
		\$	\$
		\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<input type="checkbox"/> Home Value \$600,000	<input type="checkbox"/> Other real estate Value _____
<input type="checkbox"/> Motor Vehicle #1 Year, make & model 06 VW Touareg Value \$1,000	<input type="checkbox"/> Motor Vehicle #2 Year, make & model 01 Jeep Wrangler Value \$5,000
<input type="checkbox"/> Other assets Description _____ Value _____	

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or
your spouse money
Michel Bervaldi

Amount owed to you

\$10,000/month (unpaid)

Amount owed to your spouse

\$ _____

\$ _____

\$ _____

7. State the persons who rely on you or your spouse for support.

Name

Relationship

Age

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

You

Your spouse

Rent or home-mortgage payment
(include lot rented for mobile home)

\$2,200

\$

Are real estate taxes included? Yes No

Is property insurance included? Yes No

Utilities (electricity, heating fuel,
water, sewer, and telephone)

\$500.00

\$

Home maintenance (repairs and upkeep)

\$1,000.00

\$

Food

\$600.00

\$

Clothing

\$100.00

\$

Laundry and dry-cleaning

\$0.00

\$

Medical and dental expenses

\$300.00

\$

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 400.00	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ 50.00	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ _____	\$ _____
Installment payments		
Motor Vehicle	\$ _____	\$ _____
Credit card(s)	\$ 1000.00	\$ _____
Department store(s)	\$ _____	\$ _____
Other: <u>Business Loan \$150,000</u>	\$ 1000.00	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 350.00	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ 7,500	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

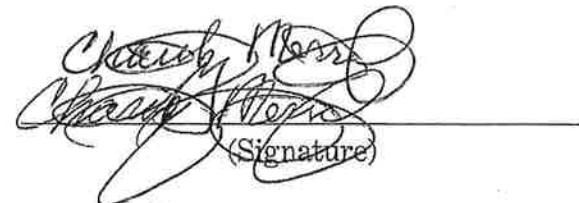
If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

This is a very complicated 5+ yr. case (a case within a case) in which the plaintiff who has a Traumatic Brain Injury and a spinal injury has been forced to self represent due to the courts not acknowledging her disabilities and not enforcing maintenance or allowing her to use the family assets from a family owned business to pay for her basic needs including legal council, while allowing the opposing party to do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 16, 2025


(Signature)

No.

In The
SUPREME COURT OF THE UNITED STATES

CHARITY MERRILL, Pro Se (Petitioner)

v.

ERIC MUSSELMAN-GARFIELD & HECHT, et al. (Respondents)

On Petition For Writ of Certiorari

To The Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Submitted by:

Charity Merrill (Pro Se)

10337 Crystal Lane

Carbondale, Colorado 81623

(970) 306-2277

charitymerrill@gmail.com

QUESTIONS PRESENTED

1. Did the courts and arbitration panel violate the Petitioner's Fourteenth Amendment rights of Due Process and Federal Arbitration Act (9 U.S.C. § 10) by refusing to recognize her documented intellectual disability, resulting in denying her legal representation, thus forcing her to proceed alone against experienced attorneys (*see Indiana v. Edwards, 554 U.S. 164 (2008); Tennessee v. Lane, 541 U.S. 509 (2004); ADA-Title II (42 U.S.C. § 12132)*).
2. Whether equitable tolling should apply to filing deadlines missed and procedural mistakes due to a person with a verified traumatic brain injury, which impairs the Petitioner's executive functioning, who is coming out of trauma and forced to self-represent without an attorney, violates her due process rights in accordance with the principles set forth in *Holland v. Florida, 560 U.S. 631 (2010)*.
3. Should the courts reassess *Gideon v. Wainwright* 372 U.S. 335 (1963) right of counsel and *Lassiter v. Dept of Social Services* 452 U.S. 18 (1981) to evaluate common law and the 5th Amendment rights for U.S. Citizens in civil cases with cognitive impairments who are suffering from violence or trauma and have no means of obtaining counsel.

4. Whether it violates the *Due Process and Equal Protection Clauses of the Fourteenth Amendment*, as well as the ethical duties of the legal profession, for opposing counsel to knowingly exploit a litigant's intellectual disability—by weaponizing complex legal procedures including arbitration hearings against an unrepresented and cognitively impaired party—to obtain favorable outcomes in civil proceedings?
5. In a “case within a case” is it a violation of *Equal Protection under the Fifth, Sixth and Fourteenth Amendment* to deny an intellectually disabled litigant access to marital assets to retain legal counsel while permitting the opposing party access to those same funds which later led to petitioner not having legal counsel in future proceedings. (*Gideon v. Wainwright*, 372 U.S. 335 (1963))
6. Whether courts may disregard a party's documented cognitive disability and still compel that party to proceed pro se in complex legal proceedings, without accommodation or access to counsel, without violating the *Due Process and Equal Protection Clauses of the Fourteenth Amendment*. (see *Tennessee vs Lane* 541 U.S. 509 (2004); *Indiana vs. Edwards* 554 U.S. 164 (2008); *ADA-Title II* (42 U.S.C. § 12132); *Federal Arbitration Act* (9 U.S.C. § 10).

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2. *Indiana v. Edwards* 554 U.S. 164 (2008). This case questions whether a petitioner with an intellectual disability can be forced to self-represent.....8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, 26

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15. *Rule 12, Colorado Rules of Professional Conduct:* Lawyers have an ethical obligation under this rule to ensure they provide competent representation to individuals with disabilities. If an attorney is aware that an individual's disability affects their ability to self-represent, the attorney is required to suggest the appointment of legal representation.....21, 22

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Colorado Supreme Court Opinion, Denied Review of Petition for Certiorari (Case No. 2024SC581, Dec. 23, 2024) “Appendix” App. 1a-2a.

Colorado Court of Appeals Opinion, Denied (Case No. 2024CA1306 Aug. 2, 2024) App. 3a-4a.

District Court Order Confirming Arbitration Award (Case No. 2023cv030127 March 13, 2024) App. 5a-8a

Arbitration award (Case # JAG 2022-0610A Oct. 27, 2023) App. 9a.-22a

JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257(a) because this matter involves federal constitutional questions and arises from the highest state court (Colorado Supreme Court) with no further recourse at the state level. This petition is timely under Rule 13 and warrants equitable tolling due to the petitioner's being forced to self-represent with a verified intellectual disability that impairs timely filing. See Affidavit of Timely Filing (App. 406a-408a).

STATEMENT OF THE CASE

1. Marriage Scam and Abuse:

This case between petitioner Charity Merrill (Formerly Charity Bervaldi) and Eric Musselman of Garfield and Hecht evolved from a divorce case (2019DR30023) in which the petitioner was the victim of a marriage scam perpetrated by her husband Michel Bervaldi, a Canadian citizen who came to the United States bankrupt (App. 279a-280a). This short marriage included title fraud (App. 329a- 323a) (App. 336a-340a) on her personal family farm and multiple frauds against their jointly owned business that Ms. Merrill had solely funded.

After Mr. Bervaldi realized Ms. Merrill might be aware of the fraud against her personal home, things immediately escalated. He rushed her, grabbing her hard around the neck while holding a fist above her head and screaming that he would “Put her in a grave so deep they will never find her body” if she ever called the police or told anyone or left the property. The police were called (App. 373a), and Ms. Merrill was taken into safe housing. These events are documented in police reports with attached protective order (App. 293a-300a) (App. 301a-305a). Just 3 days later Mr. Bervaldi changed the name of the family business with the Secretary of State's office by adding an “S” to the end of the original name (App. 341a- 344a). He then moved all the assets to a new location in an attempt to shut Ms. Merrill out of the business and leave the former business debt to her.

The marriage included forced isolation from friends and family (and life-threatening domestic violence with ongoing road rage and threats of physical harm (App. 364a-367a) (App. 384a- 391a). Though married in 2013, the parties were only together a short time due to immigration delays (App. 281a -283a) (App. 384a- 391a).

Ms. Merrill, who has an intellectual disability (App. 219a-221a) (App. 214a-218a) was forced by lower courts to self-represent due to Mr. Bervaldi's additional fraud and perjury perpetrated on the courts (App. 138a-139a) (App. 182-183a). The divorce was granted with the husband having full control of the company, but the maintenance and property settlement was never solved due to attorney neglect and lower courts' actions, thus violating Due Process. (App. 175a-190a) (App. 373- 374a).

Mr. Bervaldi continues to restrain the wife by doing everything possible to not adhere to court rulings and suing her in an additional lawsuit which was a false slander case (App. 249a-251a), thereby keeping her from affording counsel. Once the divorce was granted, Mr. Bervaldi proceeded to quickly "marry" another girl in an eerily similar situation, 4 months later she was found shot and dead with his gun (App. 323a- 325a). He then sued her family (App. 326a- 328a) for her home and oil rights which he won by witness confirmation of the marriage as no marriage license was ever attained, he then moved to have all evidence destroyed in that case (App. 328a) and 6 weeks later he married a third girl, again, in a similar situation.

Due to Covid and budget constraints on the Police Department, many things were swept under the carpet without follow-through on the investigation. The Petitioner, Ms. Merrill has worked diligently for over 5 years to expose the truth, not only for herself but for others because she believes that Mr. Bervaldi is dangerous and will go on to prey on other unsuspecting women. See the detailed timeline (App 191a-207a) for exact dates in chronological order. Also, a condensed timeline (App. 257a-363a).

2. Intellectual Disabilities:

The petitioner Ms. Merrill has a spinal injury, spinal stenosis (App. 222a-225a) and a documented Traumatic Brain Injury (TBI) A.D.H.D. and PTSD due to past and ongoing trauma (App. 219a- 222a) (App. 214a- 218a). The initial brain injury permanently disabled her executive skills including, but not limited to her ability to focus, organize files or find paper documents or computer files, working with or calculating numbers including dates, times and simple math calculations, loss of immediate and short term memory or focus, which makes writing, reading or comprehending text extremely difficult, often causing her to have to revise written text dozens of times in order for it to make sense. When under stress or distracted she struggles with verbal articulation including not being able to find simple words or finishing a thought or repeating herself both verbally and in writing documents due to forgetting what she's already said. All these symptoms are greatly magnified

under stress, sometimes limiting her comprehension speed to that of a second grader (App. 219a-221a). When stress is reduced, she can appear completely normal.

3. Opposing Party's Perjury:

In the original divorce case, under the direction of Judge Christopher Selden, during the first temporary orders hearing, Mr. Bervaldi perjured himself by misleading the courts concerning the actual income of the jointly owned business which Ms. Merrill had solely funded with a line of credit from her farm. He stated the business only made \$6,000 a month when in reality the company had made over 500k at that point and the amended tax return showed \$725,000 for the year. In the Nov 5, 2020, hearing Judge Selden addressed the financials stating they were grossly out of line with the actual earning income and misleading to the court (App. 167a) (App. 170a) (App 179- 180a).

4. Petitioner's Attorney unwilling and unprepared:

Prior to the hearing Ms. Merrill's attorney, Eric Musselman disregarded addressing the fraudulent marriage, title fraud or domestic violence, telling her a mutual stay away agreement was the same thing as a restraining order. Mr. Musselman stated that if Ms. Merrill pressed those issues that she would "look like a disgruntled wife". He also stated that if Mr. Bervaldi went to jail, that she would have a hard time getting any money from him. During the November 5, 2020, Hearing, the Court implied the same regarding matters of criminal activity. Three days before the

temporary orders hearing, Mr. Musselman had written her an email stating the jointly owned company which she had solely funded made over \$400,000 (App. 230a-232a) and that all parties had agreed to that income and he would not need to call George, the tax accountant, to the hearing to testify of the actual income.

5. Petitioner's attorney Caught off Guard:

Moments before the hearing commenced Ms. Merrill's attorney verified that number with opposing counsel, Joo Park and Mr. Bervaldi. However, moments later when Mr. Bervaldi misled the courts on the actual income (which was later determined to be perjury (App. 172a) (App. 174a) (App. 185a)), Ms. Merrill's attorney, Mr. Musselman, was caught off guard and had not come prepared to counter the misrepresentation by either calling the tax accountant, George Smith, as a witness or providing clear documentation from the bank deposits. He therefore failed to deliver the necessary evidence needed to prove the actual income (App. 167a) (App. 170a) (App. 179a-180a). Judge Selden later said "...the court's decision back in March, which I now view as a mistake, and I don't know if I made that mistake because I was just too dumb to understand the evidence or I was misled by the evidence that was presented" (App. 167a) (App. 170a) (App. 179a-180a).

During the end of the March 4, 2020, hearing, Mr. Musselman additionally asked the courts for a \$45,000 retainer fee to cover his cost and that was abruptly denied by Judge Selden. That comment that Ms. Merrill had in her notes, which was made

10 minutes before the end of the hearing, did not show up in court transcripts. Ms. Merrill later tried to address both the malpractice (App. 246a-248a) and her TBI but filed her motion in the wrong court (App. 97a-116a).

6. Petitioner locked out of fair financial provisions:

Due to the negligence of Ms. Merrill's attorney, she was given only (\$3,200) to live on and to keep her attorney, and Mr. Musselman quit 3 days later (App. 241a-243a) stating "she would not have the money to pay him". Additionally, Ms. Merrill was removed from her job (App 137a) (App. 181-182a) by Judge Selden doing marketing for the jointly owned business due to the filing of the divorce. Judge Selden also required Ms. Merrill to pay the business loan (App. 139a) of almost \$1,000 a month, leaving her with \$2,200 a month and no attorney while the husband was given full control of the company and company finances (App. 135a-143a) (App. 139a-140a) (App. 142a) since it was a male dominated business (App. 137a). Judge Selden said, "Husband will have all the business as his sole property going forward...All the upside will go to him, while Wife has no clear employment path of her own- certainly not as profitable as AFR. In these circumstances, this outcome is more than fair to Husband" (App. 142a). The court conceded that the court outcome would be different if Ms. Merrill had had counsel: "Indeed, if this were a basic business valuation dispute where the other side had both experience and an attorney the Court doubts many of Husband's arguments would have been advanced" (App. 139a) (App. 183a-184a).

7. Petitioner seeks legal help but was repeatedly denied:

Ms. Merrill and her friends diligently tried to retain legal counsel for her through legal aid and other sources, but she was denied due to the actual income earned of the company being too high. Additionally, she was unable to secure a new attorney due to not having financial resources to pay the high retainers demanded in the Aspen area for complicated cases involving title fraud and domestic abuse.

8. In the District Court, Petitioner insists she is unable to self-represent. Judge Christopher Selden wrongly assessed her condition and demanded she move forward:

Ms. Merrill addressed Judge Selden multiple times (App. 157a-163a) and clearly stated she now had no job and no counsel and was absolutely not able to represent herself and needed to find a way to regroup with her life. She also presented an affidavit from an experienced licensed professional counselor stating he had seen clear evidence Ms. Merrill was absolutely not going to be able to represent herself and probably has a cognitive disability (App 164a-165a). Judge Selden rejected that letter (App. 177a) (App. 154a) (App. 156a- 157a) due to the therapist being her friend of 30 years, and Judge Selden personally assessed Ms. Merrill's condition (App. 163a) (App. 177a-178a), stating, "You seem fine to represent yourself, people do it all the time." (see *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards* 544 U.S. 164 (2008); *ADA-Title II* (42 U.S.C. § 12132)); *Fifth, Sixth, and Fourteenth Amendment*; *Colorado Revised Statute* (CRS § 14-10-113); *Colorado Civil Rights Act* (CRS § 24-34-301 *et seq.*); *Colorado Rules of Civil Procedure* (CCRP) Rule 17 (c)).

9. Petitioner requested the jointly owned company (App. 154a) (App. 157a- 158a) to pay for her representation: Access Denied.

Again Ms. Merrill insisted she was not able to represent herself (App. 173a) and pleaded with Judge Selden to allow her attorney fees to be paid from the family's jointly owned business that the wife had solely funded, especially since the husband was utilizing the business funds for himself to pay for multiple attorneys in various cases against the wife and others (App. 154a) (App. 157a- 158a) (App. 171a) (App 173a). Judge Selden, who had dismissed the restraining order in the Stipulated Temporary Orders from Nov. 6th, 2019, against Ms. Merrill's objection, denied Ms. Merrill access to her own company funds that would have afforded her legal counsel, and he told her she would have to represent herself (against the very person who had defrauded her title and threatened her life). Thus, she was immediately thrust into the court system to try and defend herself against the very person who had perpetuated these acts against her. (see *Fifth, Sixth, and Fourteenth Amendment; ADA-Title II (42 U.S.C. § 12132)*).

10. Petitioner Greatly Prejudiced:

Under these conditions, Ms. Merrill had no chance of representing herself or exposing the atrocities committed against her since she had endured abuse to the point where her voice had been silenced due to the isolation and threats. As detailed in the extended timeline of events (App. 191a-207a) witness testimony (App. 364a- 367a) and police reports (App. 293a-300a) (App. 301a-305a) which Judge Selden ignored and never read, Ms. Merrill had good reason to be intimidated and in fear of

Mr. Bervaldi. This fear alone prejudiced Ms. Merrill's case, but with the additional brain injury, and no legal counsel, all of her cases were set up to fail, including the Arbitration hearing that she would be forced to face down the road. (See *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards* 544 U.S. 164 (2008); *Fifth, Sixth, and Fourteenth Amendment; ADA-Title II* (42 U.S.C. § 12132); *Federal Arbitration Act* (9 U.S.C. § 10)).

11. Coerced by the court Clerk:

On October 8, 2020, the day of the Divorce hearing, Ms. Merrill and her friend, who had helped carry files into the courthouse (App. 368a-370a), continued to insist to the Judge's clerk that Ms. Merrill was unable to represent herself, but the court clerk, Inez Vergara, said the Judge was in a hurry to get started and insisted that she had to sign a paper to agree to participate in the hearing and if she refused, she could lose everything by default (App. 368a-370a). Judge Christopher Selden and clerk Inez Vergara both refused to recognize her disability and coerced her to represent herself against seasoned attorneys funded by petitioner's own company (App. 376a-379a) (App. 371a-375a).

12. Petitioner was forced to self-represent throughout the Colorado court system which caused a landslide of cases, all of which were prejudiced, violating multiple Federal laws:

Due to Ms. Merrill's brain injury and slow processing speed and no legal experience she had no way of understanding her rights or the courts' protocol or procedures,

especially in the moment (App. 219a-221a). This pattern of forced representation without any acknowledgement of petitioner's disability and Judge Christopher Selden denying her funds from her own business to obtain an attorney, clearly prejudiced Ms. Merrill and caused the landfall of additional cases.

That action alone shut her out of the ability to afford legal representation in following cases, Including the arbitration, and denied her due process, right to counsel, violated A.D.A. laws and Arbitration laws thus violating multiple constitutional rights in multiple cases all stemming from the original divorce case.

As a result of being compelled to proceed without counsel, Ms. Merrill was left to navigate multiple related court proceedings on her own (App. 183a). Due to her cognitive impairment and lack of legal training, she was unable to effectively respond to subsequent filings or protect her legal interests. This led to a cascade of adverse rulings in related matters, including property division, enforcement actions, appeals, and later the Arbitration. Each ruling compounded the original due process violation and magnified the prejudice Petitioner suffered. The Judge later stated: "Wife proved substantially unable to present a coherent case on her own behalf. She now faces a lawsuit from her prior counsel. The Court's error at Temporary Orders was clearly prejudicial to Wife" (App. 138a) (App. 183a). (see *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards* 544 U.S. 164 (2008); ADA-Title II (42 U.S.C. § 12132); *Federal Arbitration Act* (9 U.S.C. § 10); *Fifth, Sixth, and Fourteenth Amendment*).

13. Arbitration Suit:

The case before this Court stems from the original divorce case. After Ms. Merrill's attorney Eric Musselman withdrew from the divorce case just 3 days after the temporary orders hearing of March 20, 2020, he later sued her in arbitration court demanding \$35,000 in unwarranted legal fees. Ms. Merrill had hired Eric Musselman of Garfield and Hecht just days after enduring physical and emotional abuse where her life was threatened (pp. 384- App. 391a) (App. 373a) to the point of being placed in an advocate safe house (App. 293a- 300a) (App. 301a- 305a). Mr. Musselman was hired to defend her against that abuse and to expose the fraudulent marriage as well as the title fraud on her personal home and jointly owned business. However, Mr. Musselman, who was caught off guard by the perjury, failed to represent her basic interests by providing the correct family income at the temporary orders hearing. which could have been done by simply calling the company tax account as a witness or showing the company deposits. (App. 246a-248a). Judge Sleden stated earnings were "grossly misrepresented" and "courts were misled" (App. 166- 177a) (App. 170a) (App. 179a- 180a) Ms. Merrill, now close to being destitute, has no way of affording an attorney to represent her in an arbitration or any future litigation (see *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards* 544 U.S. 164 (2008); *ADA-Title II* (42 U.S.C. § 12132)).

14. Petitioner Updates Her Psychological Test:

After District court Judge Christopher Selden repeatedly refused to acknowledge Ms. Merrill's intellectual disability she sold off most of her farm equipment and

animals to be able to afford medical testing to further prove she was unable to self-represent (App. 219a-221a) (App. 214a-218a). She voluntarily underwent multiple up to date psychological and medical tests and evaluations which she presented to all the courts, arbiters and to opposing attorneys to prove that she was not able to represent herself and to show that she was being greatly prejudiced by being forced to proceed in any litigation without an attorney (App. 270a- 278a) (App. 166a-170a) (App.153a- 165a) (App. 144a- 151a) (App. 117a- 119a) (App. 97a- 116a) (App. 90a- 96a) (App. 89a) (App. 82a- 84a) (App. 76-75a) (App. 66a- 67a) (App. 55a- 63a) (App. 48a- 49a) (App. 30a- 47a).

15. Arbitration Demanded:

Despite Ms. Merrill clearly presenting evidence of her intellectual disability to the Arbitration Judge Emily Anderson (App. 90a-96a), that clearly showed she was unable to self-represent or proceed due to her brain injury, the Arbitration courts and attorney for the opposing party, Ross Pulkrabek, clearly dismissed that fact and she was again forced to proceed without counsel against seasoned attorneys (App. 394a-396a) (App. 397a-399a) (App. 400a. -402a). Additionally, prior to Arbitration in status conferences about her brain injury, Ms. Merrill requested that the hearing be postponed until either the property settlement was resolved or consistent maintenance was enforced by the lower courts to allow the petitioner to afford counsel for the Arbitration; this was also denied (see *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards* 544 U.S. 164 (2008); *Holland vs Florida*, 560 U.S. 631 (2010); *Federal Arbitration Act* (9 U.S.C. § 10)).

16. Prejudicial Arbitration Hearing:

To protect herself, Ms. Merrill requested the hearing be recorded but that was denied (App. 89a) which violated *ADA- Title II* (42 U.S.C. § 12132). She was told she would have to set that up herself, but the arbitration Judge knew she had no money. At the start of the Arbitration, Judge Emily Anderson threw out important evidence (due to procedural errors) including Ms. Merrill's psychological evaluations that proved Ms. Merrill's intellectual disability and clearly stated why she was unable to represent herself (App. 394a-396a) (App. 397a-399a) (App. 400a-402a). Additionally lower court transcripts were also thrown out where the former District court Judge Christopher Selden, after witnessing Ms. Merrill attempt to self-represent in her own divorce hearing, finally had admitted that she was clearly unable to represent herself and was greatly prejudiced by not having an attorney: "Wife proved substantially unable to present a coherent case on her own behalf" (App. 138a). (App. 139a) (App. 174a). This along with being forced to represent herself in the arbitration proceedings when she had a clear disability constituted extreme prejudice against Ms. Merrill (App. 394a-396a) (App. 397a-399a) (App. 400a-402a). (see *Gideon v. Wainwright*, 372 U.S. 335 (1963)). Further key evidence submitted was thrown out before or at the hearing again mostly due to procedural mistakes. Later documents that she was told were thrown out showed up in the court index. (see *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards* 544 U.S. 164 (2008); *ADA-Title II* (42 U.S.C. § 12132); *Fourteenth Amendment; Federal Arbitration Act* (9 U.S.C. § 10)).

17. Greatly Prejudiced in all courts, Disability Weaponized by opposing Attorneys:

The petitioner, who is 65 and a former model and actress looks and acts normal (not all disabilities can be seen) until she is put under certain kinds of stresses. One psychologist said, "If we ever go to war, I want you on my side, but stay away from my office). Her initial head injury had been obtained in a motorcycle accident at the age of 13, two other accidents followed, one from an accident on a movie set involving a mortar bomb misfiring where Ms. Merrill was impacted by the blastwave of that explosion and another where she fainted due to her brain injury and fell face first on a rock breaking out multiple teeth and causing more cognitive damage. All these incidents compounded the problem and disabled the part of her brain that controls her executive skills, *precisely* what one would need to efficiently maneuver through the court system and represent themselves in a court of law (App. 374a). Regardless, her pleas for aid or for her disability to be properly recognized by both Judges and attorneys were consistently ignored by the courts. Instead, her disability was weaponized by all opposing attorneys involved who went against *Colorado Rules of Professional Conduct Rule 12*, which states "if attorneys are aware of such a disability they are obligated to suggest counsel for that person". Opposing attorneys immediately began to bombard her with multiple boxes of duplicate legal documents and motions that demanded timely responses which petitioner had to try to learn how and to handle in the moment, when she couldn't organize a fax or bank statement (see *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards* 544 U.S. 164 (2008); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Fifth, Sixth, and Fourteenth*

Amendment; Due Process; ADA- Title II (42 U.S.C. § 12132); Federal Arbitration Act (9 U.S.C. § 10)).

18. Missed Deadlines: Equitable Tolling. Affidavit of Timely Filing:

Ms. Merrill has extreme difficulty in trying to understand and maneuver the legal system with these disabilities. Thus, she often misunderstood court protocol and procedures, often missing filing deadlines or admitting documents into the wrong court or depending on her level of stress, not remembering if she filed a document or sent an email out at all after writing the document. Additionally, friends who tried to help her were never able to access the court's online filing system due to it not being set up yet and requiring a bar number. She has filed a detailed affidavit of Timely Filing (App. 406a-408a). (see *Equitable Tolling; Holland v. Florida*, 560 U.S. 631 (2010); ADA- Title II (42 U.S.C. § 12132); Federal Arbitration Act (9 U.S.C. § 10)).

19. Arbitration award filed in District Court for confirmation (App. 68a-71a) March 13, 2024, Case No. 2023cv030127:

Ms. Merrill clearly presented the reports of her cognitive disability to the District court Judge Anne Norrdin, showing she was prejudiced from the onset and forced to self-represent in the Arbitration with an intellectual disability. Ms. Merrill petitioned the courts to consider the prejudices based on the *Federal Arbitration Act* (9 U.S.C. § 10) and *Equitable Tolling Laws* and asked that the award be vacated (App. 76a-79a). District Court Judge Anne Norrdin also chose to ignore her brain

injury and confirmed the arbitration award and placed \$150,000 judgement on Ms. Merrill's home. Additionally, she allowed Ms. Merrill's former attorney, Eric Musselman, to garnish her bank account (App. 256a-261a). In the winter of 2024/2025 after Ms. Merrill sold off more personal items and 3 of her favorite animals to afford heat, Garfield and Hecht emptied her bank account of \$1,600 that was set aside to pay for propane, leaving her without heat in single digits and below temperatures in the middle of winter (see *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards* 544 U.S. 164 (2008); ADA- Title II (42 U.S.C. § 12132); Fifth, Sixth, and Fourteenth Amendment; Federal Arbitration Act (9 U.S.C. § 10)).

20. All Courts followed suit and ignored pleas: Compounded harm

Over the five plus years of legal struggles that have decimated Ms. Merrill's life, all courts in Colorado including the Arbitration Court, the District Court, the Colorado Court of Appeals and the Colorado State Supreme Court have heard her pleas for her disability to be recognized and her cases to be reconsidered. Collectively, all the courts in Colorado, of which all received her psychological evaluation (App. 219a-221a.), denied her request and her pleas that, had they been heard, would have completely prevented some of the lawsuits and allowed her a fair hearing in multiple other cases (App. 270a- 278a) (App. 166a-170a) (App.153a- 165a) (App. 144a- 151a) (App. 117a- 119a) (App. 97a- 116a) (App. 90a-96a) (App. 89a) (App. 82a- 84a) (App. 76-75a) (App. 66a- 67a) (App. 55a- 63a) (App. 48a- 49a) (App. 30a- 47a).

(see *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards*, 544 U.S. 164 (2008); ADA- Title II (42 U.S.C. § 12132); Fifth, Sixth, and Fourteenth Amendment; *Equitable Tolling*; *Federal Arbitration Act* (9 U.S.C. § 10)).

21. Community helps:

The petitioner, along with the encouragement and help of the community, has worked tirelessly for over 5 years in attempting to learn the legal process. The community has continued to help her with formatting and writing legal documents more clearly as they themselves studied it, all in an attempt to give her and others like her a voice. The local community, including lawyers, doctors, therapists and business owners, are appalled by the injustice and the egregious nature of this case that has been demonstrated by all the lower courts in forcing Ms. Merrill to self-represent against seasoned attorneys.

Since Colorado courts have repeatedly insisted on ignoring Ms. Merrill's cognitive disabilities, she had no other choice but to try and defend herself in these multiple overlapping cases despite her disadvantages. This is what has brought her to the U.S. Federal Court. Thus, many people have aided her as they could, not only in preparing documents but many have come together for over 5 years to help pay for her most basic needs and at times to help with money to try to obtain court transcripts or keep legal counsel.

22. Multiple Overlapping Cases:

She has had to battle multiple overlapping cases due to the court's refusal to allow her an attorney or to hold Mr. Bervaldi accountable for weaponizing the judicial system and for noted perjury, domestic abuse and unpaid maintenance. These cases where the wife was never clearly heard due to her disability and no legal counsel include: the initial divorce, a planned fraudulent marriage from a Canadian citizen, court ignored property settlement (still ongoing), title fraud, company fraud, loss of her company, domestic violence, arbitration hearings, and now ongoing judgements against her only property brought on by the arbitration award where Ms. Merrill had no counsel. Additionally, there was a false slander suit (App. 249a- 251a). brought against her by her husband to keep her penniless and block counsel and multiple credit card and medical collection lawsuits compiled against her due to maintenance payments not being enforced. Additionally, the IRS threatens her property, saying she owes taxes on the 2019 and 2020 income she never received from her former husband.

23. Over Five and a Half Years Later - Maintenance and Property case Un-enforced and Un-finished: Taking a Toll on Petitioners Health due to poverty:

To date and over 5 plus years after the divorce was granted the property settlement and maintenance continues to be pushed back and ignored by the district court, again shutting the petitioner out financially keeping her from being able to hire or keep an attorney. The divorce was granted Dec 31, 2020, cutting Ms. Merrill out of any further profits from her own company which was unfairly given to the husband (App. 142a), violating *Due Process*. Mr. Bervaldi still refuses to pay Ms. Merrill for her 2019 or

2020 income or appropriate or consistent maintenance even though the company is making more than double what it did in 2019 at the time of the divorce. At one time, Ms. Merrill was trying to juggle 6 lawsuits at once which proved devastating to her health.

24. Petitioner Acquires Attorney to Handle Property Settlement and Smaller Cases, He realizes He's In Over His Head, Court Allows Withdraw Due To Non-Payment:

Ms. Merrill eventually secured a real estate attorney who wanted to get into family law. He helped her with collection cases and the false slander lawsuit from which he got dismissed, as well as helping her secure a new loan for her home after Mr. Bervaldi slandered her credit. Overtime, he became frustrated with the amount of paperwork and complexity of the property settlement case and the court's refusal to enforce payments and thus her inability to pay him. He motioned to withdraw from the case and Ms. Merrill objected because he actually knew ongoing financial fraud was occurring. Since Ms. Merrill's disability prevents her from calculating and explaining details, she objected. Despite Ms. Merrill's objections, the new District Court Judge, Laura C. Makar, assigned to take over Judge Selden's position allowed him to withdraw leaving the property settlement and enforcement of maintenance unresolved and Ms. Merrill again, without an attorney.

25. Mr. Bervaldi's New Attorney Files Lien on Petitioners home:

Mr. Bervaldi's new attorney for the property settlement (from the divorce that was granted over 5 years ago), Tammy Tallant- who has been made aware of Ms. Merrill's

brain injury- has made a motion trying to get the entire case including the owed property settlement and maintenance thrown out, knowing Ms. Merrill has no ability to fight this due to lack of counsel. This attorney has also filed a lien on Petitioner's home saying that Mr. Bervaldi is due half its value. (App. 266a- 267a).

STATEMENT CONCLUSION

- a. The District Court refused to acknowledge the petitioner's disability, violating *ADA- Title II (42 U.S.C. § 12132) and Fifth, Sixth, and Fourteenth Amendment.*
- b. Then refused her the funds from her own company to afford an attorney. while permitting husband use of those same funds to retain his counsel. Thus, the Petitioner was denied equal access which denied her an attorney, violating *Fourteenth Amendment.*
- c. This led to a landslide of cases and the petitioner being forced to try and defend herself with a brain injury throughout multiple cases including arbitration, violating *ADA- Title II (42 U.S.C. § 12132); Federal Arbitration Act (9 U.S.C. § 10); Fifth, Sixth, and Fourteenth Amendment.*
- d. The opposing party and all opposing attorneys weaponized this situation, forcing the petitioner to endure ongoing years of legal battles that were mentally agonizing to her as well as detrimental to her health, violating *Rule 12 - Colorado Rules of Professional Conduct.*
- e. Petitioner filed a motion for malpractice (App. 97a- 116a), but misunderstanding, entered her motion into the district court. Petitioner's former attorney Eric Musselman who failed to represent the correct income at

the first temporary orders hearing sued Petitioner in Arbitration Court claiming he wanted more than the \$5,000 Petitioner had already paid him (see *Equitable Tolling*).

- f. At Arbitration, which is the focus of this petition, the Judge also refused to acknowledge the petitioner's disability and additionally refused to postpone the hearing until an attorney could be set in place, forcing the petitioner to try and prove her former attorney's malpractice alone against seasoned attorneys (App. 374a). (see *Tennessee v. Lane*, 541 U.S. 509 (2004); *Indiana v. Edwards*, 544 U.S. 164 (2008); *ADA- Title II* (42 U.S.C. § 12132); *Fifth, Sixth, and Fourteenth Amendment; Equitable Tolling; Colorado Rules of Civil Procedure (CCRP) Rule 17 (c); Federal Arbitration Act (9 U.S.C. § 10)*).
- g. The Arbitrator then allowed crucial evidence to be thrown out including petitioner's psychological report and transcripts showing where a former Judge stated petitioner was not able to self-represent and was greatly prejudiced in being forced to do so. The petitioner lost the arbitration and a large judgment was awarded to the petitioner's former attorney, violating *ADA- Title II* (42 U.S.C. § 12132); *Federal Arbitration Act* (9 U.S.C. § 10); *Fourteenth Amendment; Rule 12 - Colorado Rules of Professional Conduct*.
- h. The district court later confirmed the arbitration award despite being aware of the petitioner's intellectual disability and the prejudice, violating *ADA- Title II* (42 U.S.C. § 12132); *Federal Arbitration Act* (9 U.S.C. § 10); *Fifth, Sixth, and Fourteenth Amendment; Equitable Tolling*.

- i. The petitioner then filed an appeal with the Colorado Court of Appeals, along with her psychological report to show the prejudice, but that was denied, violating *ADA- Title II (42 U.S.C. § 12132); Federal Arbitration Act (9 U.S.C. § 10); Fifth, Sixth, and Fourteenth Amendment; Equitable Tolling.*
- j. Petitioner then filed a Writ of Certiorari, including her psychological report showing her brain injury to the Colorado Supreme Court who declined to review the case, thereby allowing an arbitration award to stand that was obtained through a proceeding that excluded a disabled, unrepresented party from meaningful participation, violating *ADA- Title II (42 U.S.C. § 12132); Federal Arbitration Act (9 U.S.C. § 10); Fifth, Sixth, and Fourteenth Amendment; Equitable Tolling.*
- k. Finally, Petitioner arrives in the U.S. Federal Supreme Court in hopes of justice, not only for her but for all individuals who are forced to face unjust situations due to their disabilities being ignored by the Judicial system of an entire state.
- l. Petitioner now seeks this Court's review to determine whether such enforcement violates her constitutional rights of due process and equal protection, and her statutory rights under the Americans with Disabilities Act and the Federal Arbitration Act, or if new laws need to be established for unique situations like hers.

*I reserve the right to amend this statement as I am pro-se and have an intellectual disability

REASONS FOR GRANTING THE WRIT:

The denial of legal representation originated in the district court, which refused to appoint counsel or release marital funds to retain one, despite documented medical evidence of the Petitioner's traumatic brain injury. This refusal set off a chain of constitutional violations, forcing Petitioner to proceed through complex arbitration and appeals processes unassisted, without accommodation for her disability—culminating in a \$150,000 judgment and the deprivation of property.

This case raises the question of significant national importance: whether courts may enforce arbitration awards resulting from proceedings that deny intellectually impaired individuals access to counsel and accommodations. With the increasing use of mandatory arbitration in contract, divorce, housing, and employment contexts, this issue affects millions of people—especially seniors or those with cognitive or intellectual disabilities who cannot afford counsel.

If left unchecked, the courts' failure to protect vulnerable litigants in arbitration will allow systemic inequality and abuse to persist. Certiorari is warranted to ensure that federal constitutional and statutory protections apply fully within court-confirmed arbitration proceedings.

This case highlights a systemic denial of meaningful access to justice for individuals with cognitive disabilities. The lower courts ignored binding precedent and statutory

obligations under the *ADA- Title II* (42 U.S.C. § 12132), the *Fifth, Sixth, and Fourteenth Amendment, and the Federal Arbitration Act* (9 U.S.C. § 10).

I. Equitable Tolling: Is Justified Under *Holland v. Florida*

In *Holland v. Florida*, 560 U.S. 631 (2010), this Court recognized equitable tolling when extraordinary circumstances stood in the way of a diligent party. Equitable Tolling is defined when *one* of three extraordinary circumstances are presented: 1) a disabling cognitive impairment, 2) trauma or 3) no legal representation. As shown in the psychological report, the Petitioner has a verified traumatic brain injury that directly affects her executive skills and ability to fully understand court protocols and procedures. Under stress, her comprehension skills can be limited to that of a second grader and she often shuts down. She had recently endured extreme trauma and had every reason to be in fear. Additionally, she was blocked by lower courts to be able to afford counsel and then denied legal counsel in the arbitration proceedings, yet the courts gave no leniency. She was immediately thrust into the court system and forced to represent herself despite her objections. This prevented her from timely execution of complex legal tasks, and Petitioner has diligently pursued relief through all possible means. Therefore, the Petitioner respectfully requests that the Court apply the doctrine of equitable tolling in this case as this case underscores the urgent need for standardized protocols protecting intellectually disabled litigants to safeguard due process rights.

II. Denial of Accommodations and Access to Legal Counsel Violates Fundamental Due Process:

The state courts' and the arbitration court's refusal to provide reasonable accommodations for a documented disability violates due process and contravenes this Court's holding in both *Indiana v. Edwards*, 554 U.S. 164 (2008) and *Tennessee v. Lane*, 541 U.S. 509 (2004), that ADA- Title II (42 U.S.C. § 12132) validly enforces the right of access to courts.

III. Unequal Treatment of Disabled Litigant Contravenes Equal Protection Principles:

Allowing one party an attorney while denying the other, particularly one with a recognized disability, constitutes disparate treatment without a rational basis, violating Equal Protection guarantees and fundamental *Due Process*, as well as ADA- Title II (42 U.S.C. § 12132) and the Federal Arbitration Act (9 U.S.C. § 10). (see *Indiana v. Edwards*, 554 U.S. 164 (2008) and *Tennessee v. Lane*, 541 U.S. 509 (2004)).

IV. A Landmark Opportunity to Affirm the Rights of Cognitively Disabled Litigants

This case presents a rare and profound opportunity for the Court to affirm that individuals with cognitive disabilities - whether it be from a brain injury or due to other special situations- that cannot afford an attorney, deserve equal access in the justice system. The Petitioner, despite living with a documented brain injury that significantly impairs executive function, was compelled to navigate complex legal proceedings without counsel or accommodation. That such a litigant could persevere to bring this matter before the highest court underscores not only the severity of the

systemic barriers faced, but also the importance of this Court's intervention. A ruling in favor of the Petitioner would serve as a landmark declaration that constitutional protections do not yield to procedural rigidity and that the justice system must never become a weapon against the vulnerable. It would also cement the principle that the lived experiences of disabled individuals are not only relevant but indispensable to the evolution of civil rights jurisprudence.

CONCLUSION

For these reasons, Petitioner respectfully asks this Court to grant the petition for writ of certiorari and to reverse the judgment of the Colorado Supreme Court.

Respectfully submitted,



Date 6-23-25

Charity Merrill (Pro Se)

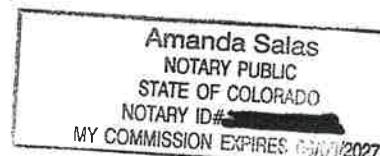
[REDACTED]
0-34 Crystal Lane
[REDACTED]
Carbondale, Colorado 81623
[REDACTED]
970-806-2277
[REDACTED]

STATE OF CO
COUNTY OF Gorfield

The foregoing instrument was acknowledged before
me this 23 day of June, 2025, by Charity Merrill Bernaldi

Amanda Salas
Notary Public's Signature
My Commission Exp. 08/08/27

Amanda Salas
Notary Name



I reserve the right to amend this document / statement as I am pro-sea and have
an intellectual disability.

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SUPREME COURT OF THE UNITED STATES

Charity Merrill, Petitioner

v.

Eric Musselman of Garfield & Hecht, Respondent

Appendix Section I

1a-2a

**Colorado Supreme Court Opinion *Denying Review*
of Certiorari**

Case No. 2024SC581

Dec. 23, 2024

Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203

DATE FILED
December 23, 2024

Certiorari to the Court of Appeals, 2024CA1306
District Court, Pitkin County, 2023CV30127

Petitioner:

Charity Merrill,

v.

Respondent:

Garfield Hecht PC.

Supreme Court Case No:
2024SC581

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado
Court of Appeals and after review of the record, briefs, and the judgment of said
Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the
same hereby is, DENIED.

BY THE COURT, EN BANC, DECEMBER 23, 2024.

SUPREME COURT OF THE UNITED STATES

Charity Merrill, Petitioner

v.

Eric Musselman of Garfield & Hecht, Respondent

Appendix Section II

3a-4a

Colorado Court of Appeals Opinion, (*Denied*)

Case No. 2024C1306

August 2, 2024

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED August 2, 2024
Pitkin County 2023CV30127	
Petitioner-Appellee: Garfield Hecht PC, v.	Court of Appeals Case Number: 2024CA1306
Respondent-Appellant: Charity Merrill.	
ORDER OF THE COURT	

To: All Parties

After review of the motion for extension of time to file the notice of appeal, and the response, the Court DENIES the motion.

IT IS THEREFORE ORDERED that the appeal is CLOSED.

BY THE COURT
Dunn, J.
Pawar, J.
Moultrie, J.

SUPREME COURT OF THE UNITED STATES

Charity Merrill, Petitioner

v.

Eric Musselman of Garfield & Hecht, Respondent

Appendix Section III

5a- 8a

District Court Order Confirming

Arbitration Award

Case No. 2023cv030127

March 13, 2024

DISTRICT COURT, PITKIN COUNTY,
COLORADO
506 E Main Street
Aspen, CO 81611
970-825-7635

DATE FILED: March 13, 2024 6:29 AM

Petitioner: GARFIELD & HECHT, P.C., a
Colorado Professional Corporation,

v.

Respondents: CHARITY MERRILL a/k/a
CHARITY BERALDI, an individual

▲ COURT USE ONLY ▲

Case Number: 2023cv030127

Div.: 2

ORDER OF JUDGMENT

This matter comes before the Court on Petitioner Garfield & Hecht, P.C.'s Petition for Order Confirming Arbitration Award and Granting Judgment Thereon ("Petition"). Having reviewed the Petition and Exhibits 1 and 2 as well as Respondent Charity Merrill's response, and being otherwise informed as to the premises, the Court finds and orders as follows:

1. Garfield & Hecht and Charity Merrill, also known as Charity Bervaldi, entered into a Legal Representation and Fee Agreement dated October 7, 2019. In Paragraph 11 of that agreement, the parties agreed to resolve any disputes that might arise between them by binding arbitration administered in Colorado by Judicial Arbiter Group, Inc. ("JAG"). Disputes subsequently arose between the parties.

2. The parties submitted their disputes to arbitration before Arbitrator Emily E. Anderson of JAG in JAG Case No. 2022-0610A. The case proceeded to an arbitration hearing on October 16, 2023, at which both parties presented evidence and argument.

3. The Arbitrator issued a reasoned written Arbitration Award on the merits of the parties' disputes on November 27, 2023 ("Arbitration Award"). The Arbitration Award was filed with this Court as Exhibit 1 to the Petition.

4. The Arbitrator ruled in favor of Garfield & Hecht and against Charity Merrill on all claims raised by either party. The Arbitration Award concluded in relevant part as follows:

G&H is awarded the principal amount of the unpaid balance of \$29,787.37.

Ms. Merrill agreed to pay interest at the rate of 1.5% per month, or 18% per annum, on any balance unpaid after 30 days. G&H is awarded interest of \$19,659.67, per its request for interest from April 2020 to [November 27, 2023].

Arbitration Award at 12. Accordingly, the total dollar amount of the arbitration award in favor of Garfield & Hecht and against Charity Merrill, as of the date of the award, November 27, 2023, was \$49,447.04.

5. The Arbitration Award provides that Garfield & Hecht may submit an application for reasonable attorney fees and costs incurred in connection with the parties' arbitration proceedings in accordance with the parties' agreement. On January 25, 2024, the Arbitrator issued an award of costs in the amount of \$11,658.83 and attorney fees in the amount of \$49,620.00.

6. The Court has jurisdiction to confirm the Arbitration Award and enter judgment thereon pursuant to C.R.S. § 13-22-226(2).

7. The Court has personal jurisdiction over the parties under C.R.S. § 13-1-124.

8. Venue is proper in this judicial district under C.R.C.P. 98.

9. Garfield & Hecht has demonstrated grounds for confirmation of the Arbitration Award in accordance with C.R.S. § 13-1-124. Charity Merrill has shown no grounds for modifying or correcting the award pursuant to C.R.S. § 13-22-220 or C.R.S. § 13-22-224 or for vacating the award under C.R.S. § 13-22-223.

10. The Court therefore orders that the Arbitration Award is confirmed as an order of this Court and is incorporated by reference as part of this order.

11. Pursuant to the terms of the Arbitration Award and the parties' agreement, post-judgment interest shall accrue at the rate of 18% per annum. *See* C.R.S. § 5-12-102(4)(a).

12. If Garfield & Hecht requests costs or reasonable attorney fees in relation to its Petition and subsequent judicial proceedings as provided by C.R.S. § 13-22-225(2), it shall submit its bill of costs and motion for attorney fees within 21 days of this order pursuant to C.R.C.P. 121 § 1-22. However, entry of judgment shall not be delayed for the taxing of costs or any award of attorney fees. *See* C.R.C.P. 58(a).

13. For the reasons set forth herein, the Court enters judgment in favor of Garfield & Hecht, P.C. and against Charity Merrill also known as Charity Bervaldi in the amount of \$49,447.04 plus costs in the amount of \$11,658.83 and attorney fees in the amount of \$49,620 for a total judgment of **\$110,725.87**. Interest shall accrue on the judgment at the rate of 18% per annum from November 27, 2023, until the judgment is satisfied. The Clerk of the District Court shall enter this judgment in the register of actions as a judgment in favor of Garfield & Hecht, P.C. and against Charity Merrill a/k/a Charity Bervaldi.

DATED: March 13, 2024.



ANNE K. NORRDIN
DISTRICT COURT JUDGE

SUPREME COURT OF THE UNITED STATES

Charity Merrill, Petitioner

v.

Eric Musselman of Garfield & Hecht, Respondent

Appendix Section IV

9a- 22a

Arbitration Award

Case No. JAG 2022-0610

November 27, 2023



**Judicial Arbiter Group, Inc.
1601 Blake Street, Suite 400
Denver, Colorado 80202
Phone: 303-572-1919
Facsimile: 303-571-1115**

In Re the Arbitration of:

Garfield & Hecht, PC

Claimant,

v.

Charity Merrill f/k/a Charity Bervaldi

Respondents.

COURT USE ONLY

JAG Case No. 2022-0610A

ARBITRATION AWARD

THIS MATTER came before undersigned, Emily E. Anderson, of Judicial Arbiter Group, Inc. for a hearing on Claimant's Demand for Arbitration and Respondent's Response on October 16, 2023. Claimant Garfield & Hecht, PC ("G&H") appeared with attorney Ross W. Pulkrabek of Keating Wagner Polidori Free, PC. The Respondent, Charity Merrill appeared by ZOOM. The hearing occurred at the JAG, Inc. office. Undersigned heard from Claimant's witness Eric D. Musselman, an attorney with G&H, the Respondent, and her witnesses.

FINDINGS OF FACT:

1. Claimant G&H seeks an award in the principal amount of \$29,787.38 for unpaid invoices for legal services rendered to Ms. Merrill. (Ex. 2 and Demand for Arbitration)
2. G&H seeks interest on the invoices based on a periodic monthly rate of 1.5%, as provided by paragraph 5 of Ms. Merrill's fee agreement with G&H. (Exhibit 1)

3. G&H requests payment of its costs and reasonable attorney fees for this arbitration, as provided by paragraphs 5 and 11 of Ms. Merrill's fee agreement with G&H. (Ex. 1)
4. Ms. Merrill never paid G&H's invoices. (Ex. 2)
5. Interest has accrued on unpaid invoices. The first invoice issued by G&H to Ms. Merrill is dated October 31, 2019. (Ex. 2)
6. G&H requests interest allowed by the fee contract from April 2020. The attorney/client relationship ended between G&H and Ms. Merrill during March 2020. (Ex. 21)
7. G&H requests leave to file a post-hearing motion asking the Arbitrator to award its attorney fees and costs in accordance with the parties' agreement if the Arbitrator finds in G&H's favor. (Ex. 1)
8. Ms. Merrill does not dispute the reasonableness of G&H's rates or fees as outlined in the contract.
9. Ms. Merrill disputes "being required to pay fees and costs for work that failed to meet a reasonable threshold of completeness or competence." (Respondent's PreHearing Brief pg. 1).
10. Mr. Bervaldi filed a Petition for Dissolution of Marriage from Ms. Merrill on October 10, 2019. Mr. Bervaldi states the parties were married 11/2014. (Ex. 3)
11. The Court found the parties were married in either 2013 or 2014. The Parties did not agree on the date of their marriage. (Ex. 15)
12. Ms. Merrill testified that she would not have received a temporary orders ruling (by judge Christopher Seldin, Pitkin County District Court case number 2019DR30023) that was negative to her, but for Mr. Musselman's incompetence in the area of family law.
13. Arbitration is required per paragraph 11 of the fee agreement. (Ex. 1)
14. The parties jointly selected undersigned to serve as the arbiter regarding the disputes.
15. Mr. Musselman is licensed to practice law in the State of Colorado, attorney registration number 35976. He is a shareholder of G&H. He was the attorney of record for Ms. Merrill in Pitkin County District Court Case Number 2019 DR 30023 ("Action"), against her then husband Michel Bervaldi, from October 2019 through March 2020.
16. Mr. Musselman practices primarily (90-95% of his practice) in the area of family law.

17. Ms. Merrill advised Mr. Musselman that she could afford to pay attorney fees.
18. Ms. Merrill advised Mr. Musselman that she owned real property.
19. The first meeting between Mr. Musselman and Ms. Merrill lasted over two hours on October 7, 2019. At the meeting, they reviewed issues for a protection order hearing and discussed fraud issues raised by Ms. Merrill about Mr. Bervaldi.
20. G&H requests full payment from Ms. Merrill in the principal amount invoiced her of \$29,787.38. (Ex. 2)
21. G&H is entitled to interest at the monthly rate of 1.5%, or 18% per annum, as well as its fees and costs for this arbitration per the fee agreement. (Ex. 1)
22. G&H performed legal services for Ms. Merrill beginning in October 2019, at which time the Firm entered into the written fee agreement with Ms. Merrill. (Ex. 1)
23. Mr. Musselman authenticated the fee agreement at the arbitration hearing. He testified his hourly rate is \$460 and that his hourly rate is reasonable based upon his experience, training, and knowledge. He lowered his hourly rate to \$360. (Ex. 2 pg. 11) He next lowered his hourly rate to \$300. (Ex. 2 pg. 16)
24. Ms. Merrill was billed \$130 per hour for the paralegal and \$195 per hour for the associate attorney. (Ex. 1)
25. Mr. Musselman testified he lowered his rate to “help” Ms. Merrill and that he added the associate attorney to perform legal work for Ms. Merrill at a lower and more efficient rate. (Ex. 2)
26. G&H made Ms. Merrill aware of its billing practices and rates. (Ex. 1)
27. As reflected by the fee agreement, Ms. Merrill agreed to compensate G&H for Mr. Musselman’s time at an hourly rate of \$460, as well as standard rates for other attorneys and paralegals who might work on her case. She also agreed to reimburse G&H for any expenses incurred on her case. (Ex. 1)
28. G&H did not guaranty Ms. Merrill any particular outcome and advised her of that in the fee agreement. (Ex. 1)
29. G&H required a \$5,000 retainer as security for payment of fees and advanced costs. (Ex. 1)
30. Ms. Merrill expressly agreed to all of the terms of the fee agreement and signed same. (Ex. 1)

31. Mr. Musselman testified he was the attorney in charge of the divorce litigation. He personally prepared the pleadings and motions in this litigation, interviewed witnesses, conducted factual investigations, represented Ms. Merrill at a mediation and multiple hearings, and performed legal research.
32. The major marital asset was a business called Aspen Foundations Repairs, LLC, or “AFR,” which was a construction company that Mr. Bervaldi owned in his name and in which Ms. Merrill was a silent partner.
33. The parties agreed to a joint appraisal of the marital residence, AFT and a boat. All three appraisal were to be paid through AFR proceeds. (Ex. 21, Stipulation for Temporary Orders)
34. The evidence shows Mr. Bervaldi and Ms. Merrill relied on income from AFR to pay their living expenses. (Ex. 5 and 8)
35. G&H represented Ms. Merrill during the pandemic.
36. The firm sends out monthly invoices to clients. The invoices generated for the Merrill/Bervaldi divorce were generated monthly. (Ex. 2).
37. Mr. Musselman reviewed pre-bills for Ms. Merrill’s matter before the invoices were issued. He testified that G&H’s billing and other expenses and costs incurred for Ms. Merrill in the divorce, as set forth in the Firm’s invoices, are accurate. Mr. Musselman did write off time in this matter.
38. Mr. Musselman testified Ms. Merrill was very hands-on in the divorce action. Ms. Merrill often met in person with Mr. Musselman and his co-workers about the case, strategy, discovery, and hearing preparation.
39. Mr. Musselman worked directly with Ms. Merrill on temporary orders sought by her pursuant to C.R.S. § 14-10-108, the Sworn Financial Statement, and related financial disclosures.
40. Mr. Musselman and Ms. Merrill worked together to prepare for the first temporary orders hearing on November 6, 2019. At the first hearing, Mr. Bervaldi agreed to Ms. Merrill’s proposed stipulation for temporary orders. The Court entered these Temporary Orders. (Ex. 4 and 21)
41. Mr. Musselman filed a motion for contempt on January 14, 2020 (Husband’s failure to pay for truck and failure to refinance and take Wife’s name off loan/Husband not allowing accountant proper access to books of family business) and requested additional temporary orders. (Ex. 5) Ms. Merrill alleged that Mr. Bervaldi was denying Ms. Merrill access to AFR accounts, information, and money. Mr.

Musselman advised the Court he would be seeking additional temporary orders for \$7,000 per month in maintenance for Ms. Merrill and \$10,000 for attorney's fees from Mr. Bervaldi. (Ex. 5)

42. The Court entered a Contempt Citation on January 16, 2020, specifically addressing the parties' accountant's access and AFR.
43. Ms. Merrill paid an initial retainer amount of \$5,000 to G&H. Ms. Merrill did not pay any other monies to G&H other than the initial retainer.
44. As of February 2020, Ms. Merrill was 4 months overdue on paying her invoices with G&H.
45. Mr. Musselman continued to represent Ms. Merrill despite non-payment.
46. Mr. Musselman testified he talked to Ms. Merrill about payment of her bill midDecember 2019. Mr. Musselman stated Ms. Merrill said she was bringing a check by to the firm. She never did.
47. The Court held an advisement hearing on the Contempt Citation on February 18, 2020. Mr. Bervaldi denied the allegations. TO's and a hearing on the Contempt Citation were set for March 4, 2020. (Ex. 7)
48. Mr. Musselman testified he was optimistic that the parties' accountant, George Smith, would be cooperative and would assist him in valuing AFR. However, as the hearing approached, Mr. Musselman found Mr. Smith to be difficult to contact and generally uncooperative. Mr. Smith did not show up for a meeting with Mr. Musselman at Mr. Smith's office.
49. The divorce proceedings continued to become more complicated after the contempt filing.
50. Mr. Musselman testified Ms. Merrill removed \$45,000-50,000 from a joint account at the beginning of the divorce. Ms. Merrill kept this money for her own use.
51. Ms. Merrill filed a temporary protection order pro se at the start of the divorce proceeding.
52. The parties and their attorneys filed a stipulation for temporary orders on November 6, 2019. The parties and their attorneys appeared for a Contempt Advisement on February 18, 2020. At that time the Court advised Mr. Bervaldi and set the matter over for further temporary orders hearing and hearing on contempt citation on March 4, 2020. (Ex. 7)

53. At the hearing on March 4, 2020, both parties were represented by attorneys and the parties testified. The Court held: “At the conclusion of the hearing the Court agreed with Husband that a monthly payment of \$3200 from AFR to Wife was a reasonable temporary measure given the financial status of the business. Husband shall deliver such payment to Wife on the 15th of each month unless the parties stipulate otherwise. The Court also ordered the parties to cooperate to provide for Husband to retrieve all remaining AFR tools, equipment, and supplies from Wife's property (and the neighboring barn) within two weeks of today's date.” (Ex. 8)

54. The Court found Mr. Bervaldi's testimony about AFR's income to be credible. Ms. Merrill wanted \$7,000 per month in maintenance, but was only awarded \$3,200 as a “monthly payment” from AFR. (Ex. 8)

55. Ms. Merrill was dissatisfied with the Court's March 4, 2020, Temporary Orders because she received a lower monthly maintenance payment than she had requested.

56. Ms. Merrill was not employed during the period G&H represented her in the divorce.

57. The attorney client relationship between Ms. Merrill and Mr. Musselman deteriorated after the second temporary orders hearing on March 4, 2020. A major source of disagreement concerned Ms. Merrill's demand that Mr. Musselman take action to stop Mr. Bervaldi from proceeding with Court-authorized retrieval of business assets from Ms. Merrill's property. Ms. Merrill told Mr. Musselman that she would not comply with that aspect of the Court's Temporary Orders. She expressed resentment toward Mr. Musselman when he advised her that she was required to comply or risk contempt of court. Next, Ms. Merrill's got the police involved. Ms. Merrill advised the authorities that Mr. Bervaldi, a Canadian, had legal problems there. (Ex. 21)

58. On March 9, 2020, G&H terminated its representation of Ms. Merrill due to her ongoing failure to pay the Firm along with the breakdown in the client-lawyer relationship. Mr. Musselman notified Ms. Merrill in writing and by telephone that the Firm no longer would represent her. Mr. Musselman filed a motion to withdraw as counsel of record in the Action on March 9, 2020. (Ex. 21)

59. One March 10, 2020, one day after Mr. Musselman's request to the Court to withdraw from Ms. Merrill's representation, he received notice through the Court's on-line docketing system of a Court filing on behalf of Ms. Merrill by another attorney, Eric Sandoval, seeking a protection order for Ms. Merrill against Mr. Bervaldi. The Court immediately entered an Order the same day denying the relief sought by Ms. Merrill and chastised her for attempting to undermine the Court's Temporary Orders:

“The Motion for TPO does not establish a basis to find an imminent threat to the life or health of Ms. Merrill. To the contrary, Husband was tasked by Court Order with going to the barn and removing supplies--Wife herself had requested just that during the Temporary Orders hearing last week. Why Mr. Sandoval is even involved in this case is unclear to the Court, given that Mr. Musselman is Wife's counsel. Presumably had he known all the facts he never would have filed this pleading. Wife appears to blame her attorney for setting things up to allow husband to access the barn, but again that is precisely what the Court authorized. This is the sort of filing that invites a Court to sanction a litigant, made all the worse because it seeks emergency relief. The Court will in this instance simply deny the Motion for TPO, but future filings of this nature will not be tolerated.”

(Ex. 9)

60. Ms. Merrill testified that Mr. Bervaldi engaged in disturbing behavior and has a violent temper. She said Mr. Bervaldi tried to “defraud her out of her home.”
61. Ms. Merrill continued *pro se* in the divorce proceeding. Permanent orders occurred on October 8, 2020, and November 15, 2020.
62. Ms. Merrill testified that Mr. Bervaldi did not pay all of the \$3,200 per month as and for temporary orders.
63. The Court ordered Mr. Bervaldi to pay Ms. Merrill the October payment of \$3,200 by November 6, 2020, in his Permanent Orders. The prior monthly \$3,200 payments were paid. (Ex. 15)
64. Mr. Bervaldi was ordered to pay \$12,670 per month in maintenance at the permanent orders hearing. (Ex. 14 and 15)
65. The Court awarded Ms. Merrill \$497,500 as her 50% equalization award for her “half of the business” that is AFR. The Court used the first higher valuation of the AFR (\$646,000).
66. Judge Seldin conflated the property division and the spousal maintenance award. The Court of Appeals made numerous findings and reversed Judge Seldin. (Ex. 16)
67. Ms. Merrill testified Mr. Bervaldi has not paid these amounts as of the date of this Arbitration, October 16, 2023. Three years has passed since the Permanent Orders hearing.
68. The Court stated for Permanent Orders: “Based on the evidence submitted at a hearing on March 4, 2020, for modification of Temporary Orders, Wife has been

receiving \$3,200 per month (starting March 2020 through September 2020) as her share of the business profits pending the final orders hearing. This is significantly less than what she should have received given the business's actual profitability. When the Court entered its Temporary Orders, it did so in large part on reliance on Husband's testimony that the business was struggling and that he essentially had to finance it on credit cards. In addition, at that time one could reasonably have assumed COVID-19 would devastate the economy. . . ." (Ex. 15, pg. 3, paragraph 8)

69. The Court found the marital home was transferred to joint tenancy. Mr. Bervaldi advised the Court he did not know about this transfer. Ms. Merrill testified at the arbitration that Mr. Bervaldi took another woman that looked like her to the bank to have the Deed notarized. The Court found the Deed to be valid at the hearing. (Ex. 15, pg. 2).
70. The Court found the Temporary Orders were, "in effect, unjust both because they deprived Wife of her appropriate share of income during the pendency of the case and because they denied her the ability to have counsel represent her." (Ex. 15, pg. 3, paragraph 9.) Further, "The Court's error at Temporary Orders was clearly prejudicial to Wife." "And, she did not have counsel because the Court's error at Temporary Orders-which was, again, based on its reliance on Husband's inaccurate testimony about the company's financial condition."
71. One aspect of Ms. Merrill's dissatisfaction with Mr. Musselman's representation surrounds Mr. Bervaldi's recanting. In the hallway prior to the second temporary orders hearing, Mr. Bervaldi advised Mr. Musselman that he agreed he took draws of \$15 k per month and had \$8 k in expenses, leaving \$7 k for Ms. Merrill. On the stand, Mr. Bervaldi testified otherwise. Mr. Bervaldi testified AFR was struggling and he refused to confirm the aforementioned numbers. The court relied on Mr. Bervaldi's testimony. Further, Ms. Merrill was very upset that Mr. Bervaldi was told to come to the marital residence to pick up equipment and belongings. Ms. Merrill did not want items removed by Mr. Bervaldi.
72. Mr. Musselman did not make any promises to Ms. Merrill regarding any outcomes of the second temporary orders hearing.
73. The fee agreement states G&H cannot "promise or guarantee the ultimate success of your position, whether in a lawsuit, arbitration or other forum." (Ex. 1 pg. 2.)

CONCLUSIONS OF LAW:

1. Per C.R.S. § 14-10-114(4), temporary maintenance may be awarded at temporary orders. The court must review and appropriately consider the provisions, guidelines, and factors set forth in the maintenance statute. The maintenance guidelines do not create a presumptive amount or term of maintenance. The court has discretion to determine the award of maintenance that is fair and equitable to both parties based

upon the totality of the circumstances. *In re Marriage of Vittetoe*, 2016 COA 71 (Colo. App. May 5, 2016).

2. The question of temporary alimony (maintenance) in a divorce suit is largely in the discretion of the trial court, and the ruling of the court thereon should not be disturbed unless there is abuse of that discretion. *Cairns v. Cairns*, 68 P. 233 (Colo. 1902).
3. A temporary support order (maintenance) furthers the underlying purpose of Uniform Dissolution of Marriage Act (“UMDA”) to mitigate potential harm to spouses caused by process of legal dissolution of marriage by maintaining status quo pending final disposition of dissolution proceeding. *In re Marriage of Price*, 727 P.2d 1073 (Colo. 1986).
4. The purpose of temporary alimony is to allow Wife to live in her accustomed manner during pendency of action and to provide her with means to properly litigate controversy and is not definitive of her entitlement to support under permanent orders. *MacReynolds v. MacReynolds*, 482 P.2d 407, (Colo. App. 1971). Per C.R.S. § 14-10-114(4)(a)(I), the court may award a monthly amount of temporary maintenance pursuant to the provisions of C.R.S. § 14-10-114(3) that are relevant to a determination of temporary maintenance.
5. Importantly, a determination of temporary maintenance does not prejudice the rights of either party at permanent orders. C.R.S. § 14-10-114(4)(c).
6. Ms. Merrill affirmatively states that it is her “opinion that G&H’s fees are reasonable for competent and complete representation.” (Respondent’s Pre-Hearing Brief). Ms. Merrill confirmed this opinion at the arbitration on October 16, 2023.
7. Where the attorney and client have entered into a written fee agreement other than a contingency fee agreement, the Colorado Supreme Court has held that the legal standard for enforcement depends on whether the lawyer had an existing fiduciary relationship with the client at the time of entering into the agreement. If no preexisting fiduciary relationship existed, the fee agreement is treated as an ordinary contract. “[A]n attorney and his prospective client may enter into a contract with reference to fees to be charged and such a contract will be treated and construed as other contracts.” *Rupp v. Cool*, 362 P.2d 396, 397-98 (Colo. 1961).
8. If a fiduciary relationship already existed at the time of contracting, the lawyer seeking to enforce the contract is held to a heightened standard. “[T]he burden is on [the lawyer] to prove that the agreement was fairly and openly made, was supported by adequate consideration, and that [the lawyer] gave the client full knowledge of the facts and of [the client’s] legal rights when [the client] entered into the agreement, and that the services to be performed were reasonably worth the

amount stated in the agreement.'" *Id.* at 398 (quoting 7 C.J.S., Attorney and Client § 204(2)).

9. Colorado courts view an action by a lawyer to collect an hourly fee as a claim for breach of a contract for a liquidated debt—that is, an agreed-upon hourly rate multiplied by units of time—subject to a six-year limitations period. *See Rotenberg v. Richards*, 899 P.2d 365, 368 (Colo. App. 1995).
10. Three elements are required to prove a contract exists:
 - a. An offer was made;
 - b. The offer was accepted; and
 - c. The agreement was supported by consideration.*See Marquardt v. Perry*, 200 P.3d 1126, 1129 (Colo. App. 2008).
11. An offer must contain clear and definite terms. The acceptance must accept these terms. In other words, a valid contract is created when there is a "meeting of the minds" between the parties as to all essential terms of the contract. *Jorgensen v. Colo. Rural Props., LLC*, 226 P.3d 1255, 1260 (Colo. App. 2010).
12. The Arbitrator finds that G&H's burden in this case is to prove that Ms. Merrill hired G&H, that G&H did the legal work for which it invoiced Ms. Merrill, and that Ms. Merrill has not paid those invoices. The standard is not a *de novo* inquiry into a hypothetical reasonable fee along the lines of a "lodestar analysis" or *quantum meruit* determination.
13. Regardless, Ms. Merrill does not contest the reasonableness of the fees and costs invoiced by G&H.
14. At the Arbitration hearing, Ms. Merrill did not argue she was incompetent to enter into her fee agreement with G&H. Ms. Merrill had previously advised the arbitrator that she intended to raise the issue of incompetence/duress or both. Ms. Merrill affirmatively states that her previously diagnosed traumatic brain injury does not render her incompetent. Further, she affirmatively states she was not under extreme duress from her marital relationship when she signed the fee agreement with G&H. (See Respondent's Pre-Hearing Brief)
15. The affirmative defense of lack of capacity to enter into a contract arises mainly in the context of an alleged lack of sanity at the time of contracting. "Every person is presumed by the law to be sane and competent for the purpose of entering into a contract." *Forman v. Brown*, 944 P.2d 559, 562 (Colo. App. 1996). "A party can be insane for some purposes and still have the capacity to contract." *Id.*
16. "A person is incompetent to contract when the subject matter of the contract is so connected with an insane delusion as to render the afflicted party incapable of

understanding the nature and effect of the agreement or of acting rationally in the transaction.” *Id.* “Therefore, under this rule, it follows that emotional distress or severe mental depression generally is insufficient to negate the capacity to contract.” *Id.*

17. “Moreover, a contract may not be voided when . . . the alleged incompetence arose after the execution of the contract.” *Id.* “Competency to contract is determined by a party’s mental state at the time of execution of the agreement.” *Id.*
18. Ms. Merrill was not under any delusions directly related to her agreement with G&H. Ms. Merrill’s alleged TBI is not itself a condition that would render her incompetent to enter into contracts.
19. Ms. Merrill alleges Mr. Musselman was negligent or committed malpractice, whether by way of an affirmative counterclaim or a defense to G&H’s claim.
20. Ms. Merrill did not disclose any expert witnesses to support these allegations. Ms. Merrill did not request to supplement her disclosures.
21. The Arbiter ordered the parties to exchange expert disclosures on or before August 22, 2022. *See* Scheduling Order § 2 (entered July 27, 2022). Ms. Merrill also had an opportunity to supplement her disclosures but did not do so. *See* Arbiter Decision Re: Issues Discussed During May 5, 2023, Telephone Status Conference ¶¶ 22, 24 (entered June 26, 2023).
22. “Except in clear and palpable cases, expert testimony is required to establish standards of professional conduct in legal malpractice actions.” *McLister v. Epstein & Lawrence, P.C.*, 934 P.2d 844, 847 (Colo. App. 1996). Failure to disclose expert testimony in support of a claim of legal malpractice is so fatal that summary judgment may be entered on those grounds. *See Crystal Homes v. Radetsky*, 895 P.2d 1179, 1182 (Colo. App. 1995); *Boigegrain v. Gilbert*, 784 P.2d 849, 850 (Colo. App. 1989).
23. To support her allegations of malpractice against Mr. Musselman and G&H, Ms. Merrill is required to present expert testimony and she did not.
24. In a document titled “Respondent’s Disclosures” dated September 12, 2022, Ms. Merrill identified a range of alleged damages. Ms. Merrill claims, among other things, “3 years punitive damages of pain and suffering - \$500,000.”
25. Noneconomic damages are unavailable unless the person claiming them was subject to an unreasonable risk of bodily injury. *See Hale v. Morris*, 725 P.2d 26 (Colo. App. 1986). “Consistent with this principle, ‘emotional distress or other noneconomic damages resulting solely from pecuniary loss are not recoverable in a legal

malpractice action based on negligence.”” *Aller v. Law Office of Carole C. Schriefer*, 140 P.3d 23, 26-27 (Colo. App. 2005) (quoting *Gavend v. Malman*, 946 P.2d 558, 563 (Colo. App. 1997)).

26. Ms. Merrill cannot recover alleged noneconomic losses in connection with her legal malpractice allegations, even if the arbiter determined negligence occurred, which it does not.
27. “Except in clear and palpable cases, expert testimony is required to establish standards of professional conduct in legal malpractice actions.” *McLister v. Epstein & Lawrence, P.C.*, 934 P.2d 844, 847 (Colo. App. 1996). Failure to disclose expert testimony in support of a claim of legal malpractice is so fatal that summary judgment may be entered on those grounds. See *Crystal Homes v. Radetsky*, 895 P.2d 1179, 1182 (Colo. App. 1995); *Boigegrain v. Gilbert*, 784 P.2d 849, 850 (Colo. App. 1989).

ARBITRATION AWARD:

G&H met its burden of proof by preponderance of the evidence that a valid contract exists to provide legal services, G&H provided those legal services and Ms. Merrill breached that contract when she failed to pay for those legal services.

Ms. Merrill admits that G&H’s fees and costs are reasonable.

Ms. Merrill did not present expert testimony regarding her claim that G&H was negligent and/or committed malpractice. Ms. Merrill’s claim for negligence, including any claim for malpractice, therefore must fail.

G&H prevails on its single claim for breach of Ms. Merrill’s written fee agreement to pay G&H’s invoices for legal fees and costs.

G&H is awarded the principal amount of the unpaid balance of \$29,787.37.

Ms. Merrill agreed to pay interest at the rate of 1.5% per month, or 18% per annum, on any balance unpaid after 30 days. G&H is awarded interest of \$19,659.67, per its request for interest from April 2020 to date.

The fee agreement (Ex. 1) states that if G&H prevails in the arbitration, Ms. Merrill agrees to pay G&H’s reasonable attorney fees and costs incurred in the arbitration process.

G&H shall file a post Arbitration Award request with the Arbiter to enter an additional Award for attorney fees and costs within 21 days from the date of this Award. Ms. Merrill shall file any objection to same within 14 days of said filing by G&H. The Arbiter will set a hearing if necessary.

Done this 24th day of November, 2023.

/s/ Emily E. Anderson
JAG, Inc.
Arbiter

**Additional material
from this filing is
available in the
Clerk's Office.**